

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 337 OF 2006

Shri Shrinath V. Chaturvedi & anr. ... Petitioners

V/s

Dr. Haniraj L. Chulani & anr. ... Respondents

Mr. R.A. Thorat with M.K. Upadhyay for the petitioners.

Mr. A.K. Abhyankar with Pradeep Sancheti for the respondents.

**CORAM: P.V. KAKADE, J.
DATED: 18TH APRIL, 2006**

P.C.:

1. Heard learned counsel for boths parties. Perused the record.

2. The petitioner is the unsuccessful tenant who is under decree for his eviction and has preferred appeal in which cours he made an application for stay of the Trial Court's order of eviction from the suit premises.

3. The lower appellate Court Judge in Appeal No. 74 of 2005 while passing the order under Application Exh.7 passed an order to the effect that the petitioner appellant should deposit the compensation or damages at

the rate of Rs.20,000/- with effect from the date of the decree till the disposal of the appeal with direction to deposit the arrears within a specified time and further directed that the appellant should deposit the compensation at the said rate regularly on monthly basis and further sought undertaking from the respondent that in case if it was found that the amount was paid in excess, he shall refund the excess amount. On this condition, the decree of the Trial Court came to be stayed with direction that if the order was not complied, the stay shall be vacated. The present petition is filed against the said order passed on 30th November, 2005.

4. The only objection raised on behalf of the petitioner is to the effect that this order was passed by the lower appellate Court on an independent application made by the respondent to fix the amount of compensation and, therefore, it cannot be said to be a order passed under Order 41 Rule 5 sub-rule (2) of the Code of Civil Procedure, but could be said to be the order passed under Order 15-A of the Code of Civil Procedure. However, if we peruse the provision of sub-rule (2) of Rule 5 of Order 41 of the C.P.C., it is quite clear that the provision lays down that no order

for stay for execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied - (a) that substantial loss may result to the party applying for stay of execution unless the order is made; (b) that the application has been made without unreasonable delay; and (3) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

In this context, it appears that the lower Court has relied upon the recent ruling of the Apex Court in the case of **Atmaram Properties Pvt. Ltd. v/s Federal Motors Pvt. Ltd.**, reported in (2005) 1 SCC 705 in order to come to the conclusion that the respondent is entitled to fix the amount of compensation or damages to be paid by the appellant. I am of the considered view that the dispute involved in this petition is fairly covered by the said ruling of the Apex Court which is properly applied by the lower appellate Court. It was submitted on behalf of the petitioner that there was no basis for the lower appellate Court to fix the monthly quantum of compensation at the rate of Rs.20,000/-. However, it is to be noted that there was valuation report on record which valued the monthly rent of compensation or damages to the extent of Rs. One lac

per month as against the demand made by the respondent at the rate of Rs.50,000/- p.m. However, the lower appellate Court, after taking into account the relevant aspects revealed by the valuation report in respect of the situation, locality, development and all other relevant aspects to hold that the proper rate of compensation would be Rs.20,000/- p.m. which was directed to be deposited as per the impugned order.

5. In view of this position, I do not see any fault in the reasoning adopted by the lower appellate Court while passing the said order.

In the result, the petition is devoid of any merits and stands dismissed with no order as to costs.

6. On request of the petitioner, the time given to deposit the balance amount of compensation is extended by six weeks. The respondent is allowed to withdraw the amount which is already deposited in the High Court.

7. At this stage, the learned counsel for the respondent brought to my notice that the Supreme Court has issued directions to expedite the hearing of the suit. In view of this position, the lower appellate

Court is directed to expedite the hearing of the appeal so as to adjudicate it on merits within six months from the date of this order.

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